

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PAUL OLDS,

Plaintiff,

v.

3M COMPANY (aka MINNESOTA
MINING & MANUFACTURING
COMPANY, *et al.*

Defendants.

Case No. 2:12-cv-08539 R (MRWx)

**UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW IN
SUPPORT OF GRANTING
DEFENDANT PNEUMO ABEX
LLC'S MOTION FOR SUMMARY
JUDGMENT**

The Court's ruling granting Defendant Pneumo Abex LLC's ("Abex") Motion for Summary Judgment is based on the findings of Uncontroverted Facts and Conclusions of Law, as set forth below, and for the reasons stated on the record at the November 25, 2013 hearing on Abex's Motion for Summary Judgment.

**UNCONTROVERTED MATERIAL
FACTS**

1. Plaintiff Paul Olds worked as a service manager at Ryder Trucks starting around March 1969 until he retired in May 1980.

SUPPORTING EVIDENCE

1. Deposition of Paul Olds, Volume I, taken January 15, 2013, p. 117:11-17 and Volume II, taken January 16, 2013, p. 398:8-400:4, attached as Exhibit B to the Declaration of Anosheh A. Hormozyari ("Hormozyari Decl.")

- 1 2. Olds never did any brake work
2 himself while at Ryder; he was
3 around others who did that work.
 - 4 3. Olds is familiar with the Rayloc
5 brand of brakes but does not
6 remember using it.
 - 7 4. Olds testified that Bendix was the
8 primary brand of brakes used at
9 Ryder, but Grizzly and Carlisle
10 brakes were also used. He did not
11 recall any other brand of brakes used
12 at Ryder.
 - 13 5. Olds testified that he did not know
14 the brand or manufacturer of brake
15 shoes purchased at NAPA.
 - 16 6. Olds testified that Ryder did some
17 relining of brakes in the early 1970s,
18 but he was not involved in that work.
 - 19 7. Olds testified that he has no
20 knowledge as to the brand name,
21 manufacturer, or supplier of the
22 lining material used at Ryder for the
23 relining process.
 - 24 8. Olds performed auto repair work on
25 his own automobiles starting in
26 1945.
 - 27 9. Olds testified that he did not recall
28 the brand name, manufacturer, or
 supplier of any replacement parts
 that he used on his own personal
 vehicles.
 10. Olds performed auto repair work on
 other people's automobiles starting
 in 1980.
 11. Olds testified that he only used
 O.E.M. replacement parts on the
 vehicles he worked on for other
 people.
2. Deposition of Paul Olds, Volume
III, taken January 17, 2013, p.
722:4-12, attached as Exhibit B to
the Hormozyari Decl.
 3. Deposition of Paul Olds, Volume
I, taken January 15, 2013, p.
137:24-138:5, attached as Exhibit
B to the Hormozyari Decl.
 4. Deposition of Paul Olds, Volume
III, taken January 17, 2013, p.
728:10-25, attached as Exhibit B
to the Hormozyari Decl.
 5. Deposition of Paul Olds, Volume
III, taken January 17, 2013, p.
693:20-24, attached as Exhibit B
to the Hormozyari Decl.
 6. Deposition of Paul Olds, Volume
III, taken January 17, 2013, p.
735:8-736:3, attached as Exhibit B
to the Hormozyari Decl.
 7. Deposition of Paul Olds, Volume
III, taken January 17, 2013, p.
736:4-7, attached as Exhibit B to
the Hormozyari Decl.
 8. Deposition of Paul Olds, Volume
IV, taken January 18, 2013, p.
848:17-25, attached as Exhibit B
to the Hormozyari Decl.
 9. Deposition of Paul Olds, Volume
IV, taken January 18, 2013, p.
850:15-18, attached as Exhibit B
to the Hormozyari Decl.
 10. Deposition of Paul Olds, Volume
IV, taken January 18, 2013, p.
849:1-4, attached as Exhibit B to
the Hormozyari Decl.
 11. Deposition of Paul Olds, Volume
IV, taken January 18, 2013, p.
851:11-16, attached as Exhibit B
to the Hormozyari Decl.

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CONCLUSIONS OF LAW

- 2 1. Summary judgment is appropriate when the pleadings, discovery, and
3 disclosure materials show that there is no genuine issue as to any material
4 fact. Fed. R. Civ. P. 56(c)(2). “A motion for summary judgment will not be
5 defeated by ‘the mere existence’ of some disputed facts, but will be denied
6 when there is a genuine issue of material fact.” *Am. Eagle Outfitters v. Lyle*
7 & *Scott Ltd.*, 584 F.3d 575, 581 (3d Cir. 2009) (quoting *Anderson v. Liberty*
8 *Lobby, Inc.*, 477 U.S. 242 , 247 - 248 (1986)). A fact is “material” if proof of
9 its existence or non-existence might affect the outcome of the litigation, and
10 a dispute is “genuine” if “the evidence is such that a reasonable jury could
11 return a verdict for the nonmoving party.” *Anderson*, 477 U.S. at 248.
12 2. The fundamental threshold issue in this asbestos litigation is whether Mr.
13 Olds was exposed to asbestos placed into the stream of commerce by Abex.
14 See *Rutherford v. Owens-Illinois, Inc.* 16 Cal. 4th 953, 975 (1997);
15 *McGonnell v. Kaiser Gypsum Co.*, 98 Cal. App. 4th 1098, 1103 (2002).
16 Plaintiff must establish exposure to asbestos from products *actually supplied*
17 by Abex and cannot rely on evidence that they *may have* placed such
18 products into the stream of commerce. *Mullen v. Armstrong World*
19 *Industries, Inc.*, 200 Cal. App. 3d 250, 257 (1988).
20 3. Causation is the nexus of any products liability action. Here, it would require
21 speculation and a stream of conjecture and surmise to establish causation and
22 find that Mr. Olds was exposed to asbestos from Abex friction products.
23 *McGonnell v. Kaiser Gypsum Co.*, 98 Cal. App. 4th 1098, 1105 (2002);
24 *Dumin v. Owens-Corning Fiberglas Corp.*, 28 Cal. App. 4th 650, 656 (1994);
25 *Whitmire v. Ingersoll-Rand Co.*, 184 Cal. App. 4th 1078, 1093-1095 (2010).
26 4. Contradictory declarations must be disregarded. “The general rule in the
27 Ninth Circuit is that a party cannot create an issue of fact by an affidavit
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1 contradicting his prior deposition testimony.” *Van Asdale v. Int'l Game*
2 *Tech.*, 577 F.3d 989, 998 (9th Cir. 2009) (quoting *Kennedy v. Allied Mut. Ins.*
3 *Co.*, 952 F.2d 262, 266 (9th. Cir. 1991)). Known as the “sham affidavit”
4 rule, this rule is necessary to maintain the integrity of the summary judgment
5 procedure. *See id.* Sham testimony is “testimony that flatly contradicts
6 earlier testimony in an attempt to ‘create’ an issue of fact and avoid summary
7 judgment.” *Kennedy*, 952 F. 2d at 266. The two criteria for invoking the
8 “sham affidavit” rule are (1) contradiction must be clear and unambiguous
9 and (2) the contradictory affidavit must not be an attempt to explain or clarify
10 earlier testimony. *Van Asdale*, 577 F.3d at 998-999. Mr. Olds’ declaration,
11 served in opposition to Abex’s Motion for Summary Judgment, is a sham
12 declaration. The declaration unambiguously contradicts his prior sworn
13 deposition testimony.

14 Plaintiff has not provided and cannot reasonably obtain competent and
15 admissible evidence establishing that Abex is liable for Mr. Olds’ injuries under
16 any theory of liability. Therefore, judgment shall be entered in favor of Abex based
17 on the Uncontroverted Facts and Conclusions of Law.

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20 Dated: December 10, 2013



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22 HONORABLE MANUEL L. REAL
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